Testimony of Dan Lipschultz

before the Maryland House of Delegates Economic Matters Committee
on HB1048: Public Utilities - Investor-Owned Utilities - Prevailing Wage
March 9, 2020

Good afternoon Chairman Davis and members of the Committee, my name is Dan Lipschultz. I am an attorney and energy industry consultant.

Until January of this year, I was a member of the Minnesota Public Utilities Commission where I served for six years, the last 4 as Vice Chair. During that time, I served as co-lead commissioner in the Commission's alternative ratemaking docket and also served as Minnesota's representative on the 16-member National Task Force on Comprehensive Electricity Planning.

Before serving on the Commission, I worked in the utility and telecommunications industries for 25 years, beginning as legal counsel to the MN Commission, moving on to serve as lead counsel in the MN Attorney General's ratepayer advocate division, and finally working for 12 years in private practice as a shareholder in a MPLS law firm representing gas and electric utilities as well as telecommunications carriers.

All told, I've been involved in the utility industry as a Commissioner or advocate for 30 years, including dozens of rate cases and utility infrastructure proceedings. Moreover, I've viewed the utility regulatory landscape from just about every angle as a ratepayer advocate, utility lawyer and regulator.

I was retained by the Baltimore-Washington Laborers' District Council to examine the public interest implications and potential residential rate impact of expanding Maryland's prevailing wage law to underground utility construction. My findings and conclusions on those two points are detailed in a Report, which we have submitted with my written testimony today.

Since you have my report and complete written testimony, I'll keep my remarks brief, highlighting ***three key findings*** in my report and allowing allow time for questions.

First, HB1048 is ***narrowly targeted*** to have the biggest possible positive impact at the smallest possible cost inasmuch as it applies solely to laborers and heavy equipment operators employed by contractors working on underground public utility facilities, primarily gas pipelines since very little electric utility infrastructure is underground.

Second, this bill ***furthers the public interest*** in safe, highly reliable public utility infrastructure and services by helping ensure a highly skilled and experienced workforce to construct that infrastructure. (Report, p 4). Although the utilities impacted by this bill are investor-owned businesses, they are identified and defined by State law as <u>***public***</u> utilities. There's good reason for that in that they are responsible for providing essential services, gas and electric, that every resident and business relies on every day – services that are, accordingly, vital to the public interest. And they provide these essential services over critical infrastructure located primarily in public rights of way. As such, establishing a wage floor for construction of this infrastructure would be a ***natural and logical extension of Maryland's current prevailing wage law***, which as described by Maryland's Department of Legislative Services (DLS), applies to "structures or works … constructed for public use or benefit. . .." Public utility infrastructure exists entirely for public use and benefit and is, in fact, essential to the public interest.

Finally, this ***bill would have a minimal impact on customer utility bills***. In fact, the overwhelming majority of the most recent peer-reviewed studies (82%) indicate that prevailing wage laws have ***little if any impact on project costs***, in part because of the efficiencies gained from an experienced and highly trained workforce and also based on competitive market forces, which cause contractors to reduce profit margins rather than risk losing lucrative projects in competitive bidding. And importantly, any minimal increases in *project costs* that *might* result from this legislation would have ***little or no impact on utility rates*** given how rates are determined, including the nature and rigor of the rate-setting process. ***Maryland's DLS reached the same conclusion***, stating that "<u>*the bill is not anticipated to materially affect utility rates*</u>, although there is likely some upward pressure over time . . .."[i] I would add that a more stable, higher quality work force resulting from a prevailing wage floor would likely offset any upward pressure on rates over time by helping avoid costly delays, safety incidents and otherwise unnecessary re-dos, repairs or maintenance.

Although the weight of peer-reviewed research and the DLS's analysis indicate that HB1048 would not materially increase utility rates, I nevertheless tested its possible rate impact by: (a) assuming the law was in effect and applicable to the capital expenditures reflected in BGE's last rate case; and (b) applying the DLS's estimate of a possible 2% to 5% increase in project costs. I used BGE for my analysis because it is Maryland's largest gas utility, and because it proposed and received the highest rate increase of any gas utility in the state. I then applied the following methodology for my analysis:

- First, I added 2-5% to the $653 million rate-base increase that BGE included in its last gas rate case. The $653 million rate-base increase reflects the increase in capital expenditures during the four years leading up to BGE's last gas rate case with appropriate accounting adjustments.

- Second, I took the higher rate base resulting from the prevailing wage and ran it through BGE's own methodology used to calculate its proposed rates.

- Finally, as my last step, I reduced the overall rate consistent with the PUC's decision and then used the PUC's rate-allocation method to determine the residential customer share of the increase.

My analysis produced a ***possible 9-cent increase*** to the average monthly residential bill if the prevailing wage increased project costs by 2%, and a 22-cent increase if the impact were 5%. Importantly, those theoretical rate increase calculations I made assume no offsetting adjustments to any other rate inputs, including BGE's rate of return.

Again, as noted by the DLS, an increase in project costs ***does not*** equate to a corresponding increase in utility rates. In fact, any increase in project costs would be incremental to a utility's existing rate base, which for BGE is nearly 2 billion dollars. That means an increase in project costs from a prevailing wage requirement going forward would be: (a) only one small portion of the total undepreciated utility infrastructure included in a utility's rates; and (b) only one of many factors that determine a utility's rates. Furthermore, a utility's rates are subject to close scrutiny by regulators and cannot increase without approval by the Maryland Public Service Commission after a typically rigorous court-like proceeding that almost always results in rates significantly below what the utility proposed.

The overwhelming weight of peer-reviewed research indicates that a prevailing wage requirement would have little if any significant impact on public utility project costs. In addition, the nature of utility rate-setting makes it unlikely that any increase in project costs would get passed on entirely if at all to consumers through higher rates. Yet, the positive impact on the quality of critical public utility infrastructure and services provided over that infrastructure could be substantial.

In conclusion, utilities in Maryland and other states, including my own, are engaged in unprecedented capital spending to upgrade existing utility infrastructure. Establishing a modest wage floor ensures that the workers we rely on for the safety and reliability of these vital assets are compensated fairly, and that these projects are built to the highest standards. This is the right bill at the right time. Enacting it would further the public interest in safe, high quality public utility infrastructure – and do so without any financial harm to consumers, consistent with Maryland's existing prevailing wage requirement. Thank you for your time and I'd be happy to answer any questions.

---

[i] Department of Legislative Services, Maryland General Assembly, 2020 Session, Fiscal and Policy Note for House Bill 1048, http://mgaleg.maryland.gov/2020rs/fnotes/bil_0008/hb1048.pdf (March 5, 2020).